

## Internal Revenue Service

## Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3 PLR-123123-02

Date:

August 22, 2002

### Legend

Estate =

Executor =

a =

b =

Dear :

This letter responds to a letter dated April 17, 2002, submitted on behalf of the Estate, requesting an extension of time pursuant to §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations for the Estate to make an election under § 663(b) of the Internal Revenue Code.

### FACTS

The information submitted discloses that Estate files its income tax return on a fiscal year basis. The Estate's Executor made a distribution in the amount of \$a ("Distribution") within 65 days of the Estate's taxable year ending b. The Executor intended to file a § 663(b) election, but due to inadvertence the § 663(b) election for the taxable year was not timely filed.

### LAW & ANALYSIS

Section 663(b) provides that if within the first 65 days of any taxable year of an estate or trust, an amount is properly paid or credited, such amount shall be considered paid or credited on the last day of the preceding taxable year, provided that the

executor of the estate or the fiduciary of the trust so elects in such manner and at such time as the Secretary prescribes by regulations.

Section 1.663(b)-(2)(a)(1) of the Income Tax Regulations provides that if a trust return is required to be filed for the taxable year of the trust for which the election is made, the election shall be made in the appropriate place on the return. The election shall be made not later than the time prescribed by law for filing the return (including extensions thereof). The election shall become irrevocable after the last day prescribed for making it.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

### CONCLUSION

Based on the facts submitted and representations made, we conclude that the Estate has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. Consequently, the Estate is granted an extension of time of 60 days from the date of this letter to make an election under § 663(b) to treat the Distribution as an amount that was properly paid or credited on b. Within the extension period, the Estate must file an amended income tax return for its taxable year ending b with the appropriate service center, with a copy of this letter attached. A copy is enclosed for that purpose.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concerning whether the Estate is eligible to make the election.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to the Estate.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

/s/

Heather Maloy  
Associate Chief Counsel  
(Passthroughs and Special  
Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: